

CONSERVATION COMMISSION
REGULAR MEETING OCTOBER 19, 2011
CONFERENCE ROOM L101 (Lower Level)

These minutes are not verbatim, but represent a summary of major statements and comments. For minutes verbatim, refer to audiotapes on file in the Office of the Town Clerk. Audiotapes are retained for the minimum period required under the retention schedule as provided under Connecticut Law.

Chairman Block called the roll call at 7:11 p.m. and noted Commissioners Byer, Igielski and Zelek were present. Also present was Town Engineer Chris Greenlaw.

ITEM III
ACCEPTANCE OF MINUTES

Regular Meeting of September 20, 2011

A question arose on the extent to which verbatim minutes could be corrected. It was the consensus of Commission members to seek direction from the Town Attorney.

Motion made by Commissioner Zelek to table the minutes over to the November meeting and was seconded by Commissioner Byer. There was no discussion. Vote was 4 yes, 0 no and the motion was carried.

ITEM IV
PUBLIC PARTICIPATION ON NON-AGENDA ITEMS: NONE

ITEM VA
Report by Administrative Officer-CT General Assembly Amended Inland Wetlands & Watercourses Act

Mr. Greenlaw noted that a copy of the correspondence received from DEEP was related to legislation passed; namely Public Acts 11-5 and 11-184, during the last session of the general assembly. These Acts dealt with the time extension of (Summary, Plenary and General) Permits issued by the Commission.

Mr. Greenlaw noted that these Acts, in his opinion, would extend an existing permit approved prior to May 9, 2011 from five (5) years to fourteen (14) years and a new permit would have a life span of nine (9) years. He noted that it would be his intention to attach a "Summary" or a copy of the correspondence as an attachment to the Regulations until such time as the Regulations are updated.

Commissioner Byer questioned the extension of an existing permit being extended to fourteen (14) years; whereas new permit is good for only nine (9) years.

Mr. Greenlaw said his remarks were base on a review of the correspondence from DEEP and a telephone conversation with Ms. Darcy Winter of DEEP.

Commissioner Igielski noted that it has been a policy of the Commission to update the Regulations every five (5) years.

Chairman Block said that maybe the Commission should start next year looking into reviewing the Regulations.

Chairman Block noted in his opinion it could be a night mare using an eight (8) year time frame. He asked Mr. Greenlaw to check with DEEP to see if the nine (9) year time limit is mandatory.

Commissioner Byer requested that Mr. Greenlaw also check with DEEP to see if the time frame for an existing permit should be nine (9) years total; not the fourteen (14) that has been implied.

Commissioner Igielski questioned the wording of the actual legislation versus the wording in the DEEP correspondence.

Chairman Block requested that the item be carried over to the November meeting.

ITEM VI A

Application 2011-08, 8 Barnhill Lane

Mr. Greenlaw noted that an updated narrative and site plan emanating from last month's meeting were included in the agenda package.

Mr. Greenlaw noted that there are two (2) Regulated (100 foot upland review area and conservation easement) areas on the property.

Mr. Greenlaw noted there is also a 50 foot wetland zoning buffer (no Conservation Commission jurisdiction). All activities are now outside of the 50 foot (zoning wetland) buffer.

Mr. John Zaczyk of Carolyn Pools, and representing the applicant, entered the following remarks into the record:

- A. The size of the pool has been reduced in size from 22 feet by 33 feet to 22 feet by 30 feet.
- B. All excess excavated material would be moved off site.
- C. All activity would occur outside of the 50 foot (zoning wetland) buffer.

Mr. Greenlaw stated that all activities would occur outside of the 50 foot zoning (wetland) buffer. All activities would occur within the 100 foot upland review area.

Commissioner Zelek asked if the house was part of the subdivision? Mr. Greenlaw responded the house was constructed in 1998.

Chairman Block asked the following questions:

A. Does the filter have to be replaced or is washable? Mr. Zaczek responded that the filter is washable.

B. How is the filter washed? Mr. Zaczek responded by using soap and water.

Commissioner Zelek asked how would the pool be drained? Mr. Zaczek responded it would not be drained because of the use of a washable filter system.

Chairman Block asked if the application was complete? Mr. Greenlaw responded yes.

Motion made by Commissioner Igielski that based on the information before it, the Commission make a finding of fact that a public hearing is not necessary for Application 2011-08 because the proposed activities would not have a major impact or significant effect on the regulated areas. Motion seconded by Commissioner Zelek. There was no discussion. Vote was 3 yes, 1 no (Byer) and the motion failed.

Commissioner Byer stated that she voted no because considering the 50 foot (zoning wetland buffer) standard regulation.

Recording Secretary Peter M. Arbur with permission of Chairman Block noted for the record the Conservation Commission has no jurisdiction over the 50 foot zoning wetland buffer. This regulation is strictly under jurisdiction of the Town Planning & Zoning Commission. The reason for discussing the 50 foot zoning wetland buffer issue under this application was to preclude the need of coming back to the Conservation Commission for a permit modification if the Commission approved a permit showing a structural encroachment into the 50 foot zoning wetland buffer.

Commissioner Igielski noted that motion only relates to the requirement for the holding of a public hearing.

Commissioner Byer said following the explanation of the 50 foot (zoning wetland) buffer, she would change her vote to yes.

The final vote was 4 yes, 0 no and the motion was carried.

Commissioner Igielski noted (for the record) that four (4) votes are required to pass a motion.

Chairman Block noted the applicant had the following options prior to the Commission formally voting to approve or deny a permit for the application:

- A. Allow the Commission to vote on the application tonight with the understanding that all four (4) Commissioners would have to vote yes on the motion to issue a permit.
- B. If the applicant desires to postpone action on the application to next month's meeting, when more members of the Commission might be present; then the applicant can grant the Commission a 65 day extension in writing because the current time limit to act expires after tonight.

The applicant asked for an explanation? Chainman Block reviewed the above options (listen to audio tape for his explanation).

The applicant presented in writing a 65 day extension to the Commission to act on the application.

It was the consensus of Commission members to carry the item over to the November Meeting.

Item VI B

Application 2011-09, 3573 Berlin Turnpike

Mr. Ozzie Torres P.E. and representing Mr. James Brown (the applicant) noted that he reviewed the concerns expressed at last month's meeting and provided a response and a set of revised site plans to the Town Engineer under correspondence dated September 23, 2011.

The Commission went into recess at 8: 10 p.m.

The Commission came out of recess at 8: 16 p.m.

Mr. Torres entered the following remarks into the record:

- A. He noted that the existing storm line and easement to Rowley Street would be removed.
- B. The 50 foot (zoning) wetland buffer line and the 100 foot upland review line have been added to the site plan.
- C. The structure (retail building) has been moved out of 50 foot (zoning) wetland buffer.
- D. Per the Commission's comments, we have added a chain link fence to the site plan (to rear of retail building).
- E. Dumpsters would remain behind the building which would ensure proper disposal of refuse. The dumpsters will be completely enclosed and will be emptied weekly or bi-weekly to further ensure a debris free environment.

Chairman Block asked the following questions:

- A. What is the width of the (travel) lane behind the building? Mr. Torres responded twenty four (24) feet (including parking spaces).

- B. What would be the size of the dumpster? Mr. Torres responded nine (9) cubic yards and would be placed on an angle so that the dumpster truck would not have to make a 90 degree turn.

Mr. James Brown, the applicant, said that he would actually use a smaller four (4) cubic yard compactor.

Chairman Block requested that the enclosure backing up to the watercourse be a solid wall.

Mr. Brown said that he would honor the request.

Mr. Greenlaw noted that the parking at the rear of the (retail) building is currently used as gravel parking area which was granted by a previous permit. The new drainage would be picked up in a closed conduit system with special structures. The work to mitigate the impact would be done within the limits of the existing (earth) berm.

Mr. Torres proceeded to explain the drainage plan for the site that included an extensive under ground storage detention system (listen to the audio tape for the details of his presentation).

Chairman Block asked what is the estimated life of the under ground storage system? Mr. Torres responded 50 years. There would be a maintenance plan in place for the isolator rows which controls the flow of water into the remainder of the system. There is a special machine that would clean the rows. The cleaning operation would be done every six (6) months or following a major storm event. A copy of the plan would be filed in the land records.

Chairman Block said that he did not want to see any plugs (floor drains) in the compactors.

There was an exchange between Chairman Block and Mr. Brown on business operations and building leases (listen to audio tape for details of the exchange).

There was an exchange between Chairman Block and Mr. Brown dealing with the two (2) grease traps on site. The discussion focused on the maintenance of the traps, the distance of the hot water line from the tap to the grease trap and the resulting potential of blockage of that line and the installation of some type of containment protection around the grease traps (listen to audio tape for details of the exchange).

Commissioner Zelek asked how much of the parking area lies in the 50 foot (zoning wetland) buffer? Mr. Torres responded 10 to 15 feet. The gravel is being used for parking today.

Mr. Greenlaw asked Mr. Torres if the coefficient of run off for compacted gravel is close to that of pavement? Mr. Torres responded yes.

Mr. Greenlaw asked Mr. Torres to explain what happens to surface run off on the property today and after development takes place? Mr. Torres responded today that the surface run off flows to a catch on the property that drains into an existing catch basin (with no treatment). After development, surface runoff would flow into and through a modern storm water system that is treated prior to its discharge.

Commissioner Igielski asked if the Town of Berlin was advised of the application? Mr. Greenlaw responded that he notified the Town Clerk and the applicant notified the Conservation Commission.

Chairman Block asked if the application was complete? Mr. Greenlaw responded yes.

Commissioner Igielski asked Mr. Greenlaw if he was satisfied with the discussion tonight and new plans? Mr. Greenlaw responded yes.

Commissioner Igielski asked Mr. Greenlaw if there might be some additional conditions? Mr. Greenlaw responded he added in some of his concerns into the conditions.

Motion made by Commissioner Igielski that based on the information before it, the Commission make a finding of fact that a public hearing is not necessary for Application 2011-09 because the proposed activities would not have a major impact or significant effect on the regulated areas. Motion seconded by Commissioner Byer. There was no discussion. Vote was 4 yes, 0 no and the motion failed.

Chairman Block advised the applicant that four (4) votes (all Commissioners present) were needed in the affirmative to pass on the application. The other option would be to grant the Commission an extension of time and carry the item over to the November meeting,

There was a general discussion between the Commission and the applicant (listen to audio tape for details of the discussion).

Mr. Brown decided to move forward with the vote on the application.

Mr. Greenlaw noted a copy of the suggested conditions was included in the agenda package.

There was a general discussion among Commission members resulting in the removal of General Conditions 1 and 2 together with the addition of Special Conditions A, B, C and D (listen to audio tape for the details of the discussion).

Motion made by Commissioner Igielski to grant a permit by Summary Ruling for Application 2011-09 and subject to conditions. Motion was seconded by Commissioner Byer.

Commissioner Igielski said there was a discussion and review of conditions based on the initial meeting concerns (last month). They have been addressed as well as the new matters (that emanated from tonight's discussion).

Commissioner Zelek noted that the applicant did an excellent effort of trying to keep the area clean around the restaurants. The space is tight around the rear area of the retail building. The property has a permit to park on the existing gravel area. He has a concern with the (proposed) paving within the upland review area next to a watercourse.

Commissioner Byer expressed a concern there is an over utilization of the land even though it is not out of line for what has been approved in other areas along the Berlin Turnpike.

Chairman Block noted there is an existing permit that allows (gravel) parking (in the area under review). Can this permit be carried over to this application (as a pre-condition)? He does not have a clue on how to consider the matter.

Commissioner Byer suggested that the matter should be referred to the Town Attorney.

Chairman Block noted that the applicant has given the Commission the authority to act tonight. The clock is a problem.

Commissioner Igielski noted that he looked at the quality of the wetland (watercourse). The applicant is doing a good job to address the problems and issues raised during the discussion. The applicant is making the area better than exists today.

Commissioner Zelek noted that the watercourse would be better. However, the addition of parking and pedestrian traffic would increase the potential for debris.

Commissioner Igielski noted that measures are being taken to address these issues.

Chairman Block noted that what is out there today is open plumbing. The proposal would clean up what is generated. What is being done is better.

Commissioner Igielski noted that the Commission can not force the applicant to restore the (upland review) area to what existed years ago.

Commissioner Zelek said that he was focusing on the 50 foot (zoning wetland) buffer.

Chairman Block noted that that we (the Commission) are dealing with the 100 foot upland review area.

The applicant was given permission to speak by the Commission.

Mr. Brown said he sees that what is being done as an improvement to the watercourse. This project is a legacy to him. Steps are being taken to improve water quality and the area would be cleaner than exists today.

Vote was 4 yes, 0 no and the motion was carried.

NOTE: Refer to audio tape or "Official Notification of Action" for conditions of the permit.

Commissioner Byer requested the presence of the Town Attorney at next month's meeting to advise the Commission if it could have an eliminated an earlier permit that allowed parking to the rear of the (proposed retail) building to remain in affect on this application along with several other questions that have arisen during recent meetings.

Commission went in to recess at 10: 15 p.m.

Commission came out of recess at 10: 30 p.m.

ITEM VIII

PUBLIC PARTICIPATION ON NON-AGENDA ITEMS: NONE

ITEM IX

COMMUNICATIONS AND REPORTS

- A. Mr. Greenlaw presented a draft resolution recognizing former Town Engineer Mr. Anthony Ferraro for review and comment prior to it being sent to the Town Council for action.
- B. Mr. Greenlaw reported that the DPW, as part of the current Mill Pond Project, plans to remove sediment from the sediment pond at the outlet of the 72 inch by 42 inch pipe located at the southeast corner of the pond. The work would be done in area which has been disturbed by activity related to the current Mill Pond Project and soil and erosion control measures are in place. The excavated material would be deposited at the Town landfill. The work would be done as a maintenance activity under the Town's General Permit No. 1. Chairman Block requested that erosion around small dock area (vicinity of the gazebo) be corrected as part of the scope of work to be done.
- C. Chairman Block expressed a concern on the existence of evasive plants in the Town. The Commission, in his opinion, should start looking as to how big a problem exists on town and private property. The item should appear on a future agenda where we could a good discussion.

Motion made by Commissioner Igielski to adjourn meeting at 10:40 p.m. and was seconded by Commissioner Byer. There was no discussion. Vote was 4 yes, 0 no and motion was carried.

Peter M. Arburr, Recording Secretary

Commission Members

Tayna Lane, Town Clerk

Town Manager John Salamone

Edmund Meehan, Town Planner

Councilor Myra Cohen

Chairperson, Town Plan and Zoning

Ben Ancona Jr., Town Attorney

Anthony Ferraro, Town Engineer

Lucy Robbins Wells Library (2)